

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT <http://www.ca2.uscourts.gov/>), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 3rd day of January, two thousand seven.

PRESENT:

HON. GUIDO CALABRESI,  
HON. ROBERT D. SACK  
*Circuit Judges,*  
HON. RICHARD M. BERMAN,  
*District Judge.\**

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LAKHWINDER SINGH,

*Petitioner,*

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\* The Honorable Richard M. Berman, of the United States District Court for the Southern District of New York, sitting by designation.

v.

No. 04-3454-ag

ALBERTO GONZALES,<sup>\*\*</sup> Attorney General of the United States,  
*Respondent.*

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For Petitioner: Mark T. Kenmore, Buffalo, N.Y.

For Respondent: Brent A. Hannafan, Assistant United States Attorneys, *for*  
James K. Vines, United States Attorney for the Middle  
District of Tennessee.

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UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals (“BIA”) decision, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the petition be DENIED.

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Petitioner Lakhwinder Singh petitions for review of a final order of removal by the Board of Immigration Appeals (“BIA”) affirming the decision of the Immigration Judge (“IJ”) ordering Singh removable pursuant to Section 212(a)(6)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly “encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.”

Federal Rule of Appellate Procedure 28(a) requires that an appellant's brief include, *inter alia*, a jurisdictional statement; a statement of the case describing lower court proceedings and dispositions below; a statement of the facts relevant to the issues on review with

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<sup>\*\*</sup>Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as a respondent in this case.

citations to the record; a summary of the argument, which should not merely repeat the argument; an argument containing appellant's contentions, the reasons for them, and applicable standards of review, “with citations to the authorities and parts of the record on which the appellant relied;” and a short conclusion stating the precise relief sought. Fed. R. App. P. 28(a) (4) , (6), (7), (8), (9). These are “mandatory direction[s].” *Ernst Haas Studio, Inc. v. Palm Press, Inc.*, 164 F.3d 110, 112 (2d Cir. 1999) (per curiam).

Singh’s brief, filed by attorney Mark T. Kenmore, utterly fails to comply with these requirements. The brief does not include a proper statement of the case nor any summary of the argument. The statement of facts does not include a single citation to the record and describes nearly none of the material facts. Moreover, the argument fails to provide “the appellant’s contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relied.” Fed. R. App. P. 28(a)(9). The five page argument section does not contain a single citation to authority, and the only citation to the record is to a statement made by Singh’s attorney during the hearing before the IJ. Instead, the argument consists almost entirely of quoting what Singh’s previous counsel “stated,” “opined,” and “believed,” without any attempt to show that these beliefs are supported by law or facts. The brief also fails to provide a consistent statement of the relief requested. Finally, the brief lacks the logical arrangement required by Local Rule 28(a). Second Circuit Local Rule 28(a) (“Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs not complying with this rule may be disregarded and stricken by the court.”).

The failure of petitioner’s brief to follow the requirements of Rule 28(a) has made meaningful appellate review impossible. *See Ernst Haas Studio*, 164 F.3d at 112; *see also*

*Yueqing Zhang v. Gonzales*, 426 F.3d 540, 546 n.7 (2d Cir. 2005) (“Issues not sufficiently argued in the briefs are considered waived and normally will not be addressed on appeal.”). As a result of this failure, we deny the petition for review. We need not and do not decide whether a meritorious petition for review could have been presented, and express no opinion as to the merits of the agency’s opinion. See *Ernst Haas Studio*, 164 F.3d at 112.

Although the briefing in this appeal makes a meaningful analysis of the petitioner’s claims in light of the applicable law impossible, the failure of petitioner’s counsel adequately to advocate the predicament of the petitioner — that despite his resident alien status, he is to be permanently removed from the United States, and thereby separated from his American wife and two children, because he drove a Canadian citizen, illegally resident and employed in Buffalo, to Canada for an evening’s entertainment and back — raises obvious concerns.

Counsel’s representation of the petitioner in this matter raises serious concerns that the petitioner’s assistance of counsel may have been constitutionally ineffective. See *Matter of Lozada*, 19 I & N Dec. 637 (BIA 1988). The petitioner may seek to obtain the services of another attorney to consider whether such a claim can and should be made. Counsel is hereby warned that continued failure to comply with the Rules of Appellate Procedure could result in discipline. See Fed. R. App. P. 46(b), (c).

For the foregoing reasons, the petition for review is DENIED. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as moot.

FOR THE COURT,  
Thomas Asreen, Acting Clerk of Court

by: \_\_\_\_\_

